

Pension Benefit Guaranty Corporation

§ 4208.9

§ 4208.4(b) shall be made by substituting the test set forth in paragraph (c)(1) of this section for that prescribed by § 4208.4 (b)(1)(ii) or (b)(2)(ii), as applicable. If the employer resumes work at or under fewer than all the facilities or collective bargaining agreements described in this paragraph, the employer cannot qualify for elimination of its liability under § 4208.4(b). However, the employer may qualify for a reduction in its partial withdrawal liability pursuant to paragraph (c)(2) of this section.

(1) *Resumption of work at all facilities and under all bargaining agreements.* The test under this paragraph is satisfied if for each of the two consecutive plan years referred to in § 4208.4(b), the employer's total contribution base units for the facilities and under the collective bargaining agreements with respect to which the employer incurred the multiple partial withdrawals exceed 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for those facilities and under those agreements for the base year (as defined in paragraph (d) of this section).

(2) *Resumption at fewer than all facilities or under fewer than all bargaining agreements.* If the employer satisfies the conditions in § 4208.4 (b)(1)(i) and (b)(1)(iii) and paragraph (c)(2)(i) of this section, or the conditions in § 4208.4 (b)(2)(i) and (b)(2)(iii) and paragraph (c)(2)(ii) of this section, as applicable, the employer's withdrawal liability shall be partially waived as set forth in paragraph (c)(2)(iii) of this section.

(i) With respect to a resumption of work under § 4208.4(b)(1), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 4208.4(b)(1), the employer's contribution base units for any reentered facility or agreement exceed 30 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(ii) With respect to a resumption of work under § 4208.4(b)(2), the condition under this paragraph is satisfied if, for the two consecutive plan years referred

to in § 4208.4(b)(2), the employer's contribution base units for any reentered facility or agreement exceed 90 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(iii) The employer's reduced withdrawal liability and, if any, the reduced annual payments of the liability shall be determined by adding the average number of contribution base units that the employer is required to contribute for those two consecutive years for that facility(ies) or agreement(s) to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA. The amount of any remaining partial withdrawal liability shall be paid over the schedule originally established starting with the first payment due after the revised payment schedule is issued under § 4208.3(c)(4).

(d) *Base year.* For purposes of this section, the base year contribution base units for a reentered facility(ies) or under a reentered agreement(s) are the average number of contribution base units for the facility(ies) or under the agreement(s) for the two plan years for which the employer's contribution base units for that facility(ies) or under that agreement(s) were highest within the five plan years immediately preceding the partial withdrawal.

§ 4208.9 Plan adoption of additional abatement conditions.

(a) *General rule.* A plan may by amendment, subject to the approval of the PBGC, adopt rules for the reduction or waiver of partial withdrawal liability under conditions other than those specified in § 4208.4, provided that such conditions relate to events occurring or factors existing subsequent to a partial withdrawal year. The request for PBGC approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. A plan amendment under this section may not be put into effect until it is approved by the PBGC. An amendment that is approved by the PBGC may apply retroactively.

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(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the IRS and the three-digit Plan Identification Number (PIN) assigned to the plan by the plan sponsor, and, if different, also the EIN-PIN last filed with the PBGC. If an EIN-PIN has not been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) The date on which the amendment was adopted;

(ii) The proposed effective date;

(iii) The full text of the rules on the reduction or waiver of partial withdrawal liability; and

(iv) The full text of the rules adjusting the reduction in the employer's liability for a subsequent partial or complete withdrawal, as required by section 4206(b)(1) of ERISA.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines that it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this sec-

tion if it determines that the rules therein are consistent with the purposes of ERISA. An abatement amendment is not consistent with the purposes of ERISA unless the PBGC determines that—

(1) The amendment is not adverse to the interests of plan participants and beneficiaries in the aggregate; and

(2) The amendment would not significantly increase the PBGC's risk of loss with respect to the plan.

(Approved by the Office of Management and Budget under control no. 1212-0039)

[61 FR 34093, July 1, 1996, as amended at 68 FR 61355, Oct. 28, 2003]

§ 4208.10 Method of filing; method and date of issuance.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part.

(c) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

[68 FR 61355, Oct. 28, 2003]

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

Subpart A—General

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Subpart B—Changes Not Subject to PBGC Approval

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4211.12 Modifications to the presumptive, modified presumptive and rolling-5 methods.